

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TITANESS LIGHT SHOP,)	
)	
Plaintiff,)	3:12-CV-0620-LRH-VPC
)	
v.)	
)	<u>ORDER</u>
SUNLIGHT SUPPLY, INC., et al.,)	
)	
Defendants.)	
)	

Before the court is defendants Sunlight Supply, Inc. (“Sunlight”) and IP Holdings, Inc.’s (“IP Holdings”) (collectively “defendants”) motion for a preliminary injunction against plaintiff Titaness Light Shop, LLC (“TLS”). Doc. #23.¹ TLS filed an opposition (Doc. #24) to which defendants replied (Doc. #31).

I. Parties and Factual Background

Defendant Sunlight is a distributor of specialty gardening supplies. Since 1995, Sunlight has been an industry leader in the indoor gardening industry offering over 5,000 different products. Defendant IP Holdings is the holding company for Sunlight’s various intellectual properties. Defendants, through IP Holdings, are the owners of the mark TITAN CONTROLS.² That mark is

¹ Refers to the court’s docketing number.

² Federal Registration No. 3604100. A copy of the registration is attached as Exhibit A-1 to the motion for a preliminary injunction. Doc. #23, Exhibit A-1.

1 used to market controller devices that are used in conjunction with other indoor gardening
 2 equipment (like grow lights, fans, etc.) to control lighting and environmental conditions, and has
 3 been used by defendants since 2008.

4 Plaintiff TLS is a U.S.-based manufacturer specializing in designing, manufacturing, and
 5 selling sophisticated indoor grow lighting systems and lighting components. In September 2012,
 6 TLS began marketing its lighting products under the TITANESS service mark along with
 7 individual trademarks for each product. On October 16, 2012, TLS applied for a federal trademark
 8 for the TITANESS mark. In response, defendants submitted a letter of protest to the
 9 Commissioners for Trademarks at the United States Patent and Trademark Office.

10 On November 20, 2012, plaintiff TLS filed the underlying complaint against defendants
 11 seeking declaratory relief that: (1) its TITANESS mark does not infringe defendants' TITAN
 12 CONTROLS mark; and (2) that defendants' TITAN CONTROLS mark is invalid. Doc. #1. In
 13 response, defendants filed an answer alleging four counterclaims: (1) trademark infringement in
 14 violation of the Lanham Trademark Act of 1946 ("the Lanham Act"), 15 U.S.C. § 1114; (2) false
 15 designation or origin and false description in violation of the Lanham Act, 15 U.S.C. § 1125(a);
 16 (3) trademark dilution in violation of the Lanham Act, 15 U.S.C. § 1125(c); and (4) common law
 17 trademark infringement. Doc. #15. Thereafter, defendants filed the present motion for a preliminary
 18 injunction seeking an order barring TLS from using any marks that indicate an association with the
 19 defendants and their products, including the TITANESS mark. Doc. #23.

20 **II. Legal Standard**

21 A court may grant a preliminary injunction only upon a showing that: (1) the petitioner is
 22 likely to succeed on the merits of his complaint; (2) irreparable harm will result in the absence of an
 23 injunction; (3) the balance of equities favors an injunction; and (4) an injunction is in the public's
 24 interest. *Winters v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 376 (2008) (citations omitted).
 25 Further, a preliminary injunction is an "extraordinary remedy that may only be awarded upon a
 26 clear showing that [the moving party] is entitled to such relief." *Id.* (*citing Mazurek v. Armstrong*,

1 520 U.S. 968, 972 (1997) (per curiam)).

2 **III. Likelihood of Success on the Merits**

3 “The sine qua non of [a court’s injunctive] inquiry is likelihood of success on the merits: if
 4 the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors
 5 become matters of idle curiosity.” *New Comm Wireless Services, Inc. v. SprintCom, Inc.*, 287 F.3d
 6 1, 9 (1st Cir. 2002). However, a plaintiff may be awarded a preliminary injunction by establishing
 7 “that serious questions going to the merits were raised and the balance of hardships tips sharply in
 8 the plaintiff’s favor” so long as the plaintiff satisfies the additional *Winters* factors. *Alliance for*
 9 *Wild Rockies v. Cottrell*, 622 F.3d 1045, 1050 (9th Cir. 2010); *see also, Dept. of Parks and*
 10 *Recreation for the State of California v. Bazarr Del Mundo, Inc.*, 448 F.3d 1118, 1123 (9th Cir.
 11 2006).

12 The Lanham Act, “provides national protection of the ability of consumers to distinguish
 13 among competing producers.” *Entrepreneur Media, Inc. v. Smith*, 279 F.3d 1135, 1140 (9th Cir.
 14 2002). “To prevail on a claim of trademark infringement under the Lanham Act, the movant must
 15 establish that he is (1) the owner of a valid, protectable mark, and (2) that the alleged infringer is
 16 using a confusingly similar mark.” *Russell Road Food and Beverage v. Spencer*, 2013 U.S. Dist
 17 LEXIS 11034, *5 (D. Nev. 2013); *see also Reno Air Racing Association v. McCord*, 452 F.3d
 18 1126, 1134 (9th Cir. 2006).

19 In their motion for a preliminary injunction, defendants argue that they are likely to succeed
 20 on the merits of their counterclaims under the Lanham Act because: (1) TITAN CONTROLS is a
 21 protectable mark; and (2) TLS’s use of the competing TITANESS mark is likely to cause consumer
 22 confusion. *See Doc. #23*. Each element is addressed below.

23 **A. Valid Mark**

24 Generally, “[a] certificate of registration of a mark upon the principal register provided by
 25 this Act shall be prima facie evidence of the validity of the registered mark.” 15 U.S.C. § 1057(b);
 26 *see also*, 15 U.S.C. § 1115(a); *see also, Reno Air Racing Assoc.*, 452 F.3d at 1135. However, “[t]he

1 presumption of validity of a registered mark may be overcome by a preponderance of the evidence,
2 where the [opposing party] presents some evidence of invalidity.” *Signeo USA, LLC v. Sol*
3 *Republic, Inc.*, 2012 U.S. Dist. LEXIS, *16 (N.D. Cal. 2012). In analyzing an invalidity
4 challenge, the court draws any inference from the facts in favor of the party asserting the validity of
5 its registered mark. *Id.*

6 Initially, the court finds that defendants are entitled to a presumption of trademark validity
7 because TITAN CONTROLS is a federally registered mark. *See* 15 U.S.C. § 1057(b). In its
8 opposition to the motion for a preliminary injunction, TLS argues the TITAN CONTROLS mark is
9 invalid because defendant IP Holdings filed a voluntary amendment to its trademark registration
10 application changing its date of first use from January 1, 2008, to June 1, 2008 - after the date the
11 trademark registration application was filed on May 2, 2008. However, TLS’s registration
12 application challenge is insufficient to overcome the mark’s presumption of validity. When filing
13 the initial registration application for TITAN CONTROLS, IP Holdings filed a Section 1(b) Intent
14 to Use application. An Intent to Use application necessarily means that IP Holdings was not
15 claiming use of the mark at the time it filed the application in May 2008, but that it intended to use
16 the mark (and did use the mark) in the near future. IP Holdings then filed the required statement of
17 actual use in January 2009. This correction does not make the otherwise valid trademark invalid.
18 Therefore, the court finds that TITAN CONTROLS is a valid, protectable mark. Because the court
19 has found that defendants have a protectable mark, the court must now determine whether there is a
20 likelihood of confusion between defendants’ TITAN CONTROLS mark and TLS’s TITANESS
21 mark.

22 **B. Likelihood of Confusion**

23 “The core element of trademark infringement is whether customers are likely to be confused
24 about the source or sponsorship of the products.” *Reno Air Racing Assoc.*, 452 F.3d at 1135 (citing
25 *Interstellar Starship Services, Ltd. v. Epix, Inc.*, 304 F.3d 936, 941 (9th Cir. 2002). “The test for
26 likelihood of confusion requires the fact finder to determine whether a reasonably prudent

1 consumer in the marketplace is likely to be confused as to the origin of the good or service bearing
 2 on of the marks.” *Survivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 630 (9th Cir. 2005). In
 3 determining likelihood of confusion, courts use an eight-factor test, known as the *Sleekcraft* factors,
 4 to guide the court’s analysis and assessment. *See AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-
 5 49 (9th Cir. 1979). The eight *Sleekcraft* factors are: “(1) the strength of the mark; (2) proximity or
 6 relatedness of the goods; (3) the similarity of the marks; (4) evidence of actual confusion; (5) the
 7 marketing channels used; (6) the degree of care customers are likely to exercise in purchasing the
 8 goods; (7) the defendant’s intent in selecting the mark; and (8) the likelihood of expansion into
 9 other markets.” *Id.*

10 i. Strength of the Mark

11 The first *Sleekcraft* factor is the strength of the mark sought to be protected. *Sleekcraft*, 599
 12 F.2d at 348. The scope of trademark protection that is given to a mark “depends upon the strength
 13 of the mark, with stronger marks receiving greater protection than weak ones.” *R&R Partners, Inc.*
 14 *v. Tovar*, 447 F. Supp. 2d 1141, 1151 (D. Nev. 2006); *see also General Motors Co. v. Let’s Make a*
 15 *Deal*, 223 F. Supp. 2d 1183, 1194 (D. Nev. 2002) (“[T]he stronger a mark - meaning the more
 16 likely it is to be remembered and associated in the public mind with the mark’s owner - the greater
 17 the protection it is accorded by the trademark laws.”); *Sleekcraft*, 599 F.2d at 350 (holding that a
 18 weak mark is entitled to only a restricted range of trademark protection). “The strength of the
 19 trademark is evaluated in terms of its conceptual strength and commercial strength.” *JL Beverage*
 20 *Company v. Beam, Inc.*, 2012 U.S. Dist LEXIS 137076, *13 (D. Nev. 2012).

21 “Trademarks may be sorted into five categories of increased strength and distinctiveness:
 22 (1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; or (5) fanciful.” *General Motors Co.*, 223
 23 F. Supp. 2d at 1194. “Identifying whether a mark is generic, descriptive, suggestive, arbitrary or
 24 fanciful, however, is only the first step of the inquiry. The second step is to determine the strength
 25 of this mark in the marketplace.” *JL Beverage Company*, 2012 U.S. Dist LEXIS 137076, at *19.
 26 “Commercial strength is based on actual marketplace recognition, and thus advertising

1 expenditures are often a sound measure of commercial success.” *Id.* at *20.

2 Here, the parties dispute whether TITAN CONTROLS is a descriptive or suggestive mark.
 3 A descriptive mark is one that describes the quality or features of the product while a “suggestive
 4 mark conveys an impression of a good but requires the exercise of some imagination and
 5 perception to reach a conclusion as to the product’s nature.” *JL Beverage Company*, 2012 U.S. Dist
 6 LEXIS 137076, *15. Descriptive marks “will be protected only when secondary meaning is
 7 shown,” *Sleekcraft*, 599 F.2d at 349, while suggestive marks will be protected without proof of
 8 secondary meaning, *JL Beverage Company*, 2012 U.S. Dist LEXIS 137076, *15.

9 Although the distinction between descriptive and suggestive marks may be inarticulable,
 10 and often confusing, several criteria offer guidance. “The primary criterion is the imaginativeness
 11 involved in the suggestion; that is, how immediate and direct is the thought process from the mark
 12 to the particular product.” *Sleekcraft*, 599 F.2d at 349. “A secondary criterion is whether granting
 13 the trademark owner a limited monopoly will in fact inhibit legitimate use of the mark by other
 14 sellers.” *Id.* A third criterion “is whether the mark is actually viewed by the public as an indication
 15 of the product’s origin or as a self-serving description of it.” *Id.*

16 In their motion, defendants argue that TITAN CONTROLS is a suggestive mark because it
 17 requires consumers to use their imagination to understand the mark’s significance in relation to the
 18 product. Defendants contend that TITAN is another name for Helios, the Greek god of the sun, and
 19 their indoor gardening products replicate sunlight. Thus, according to defendants, a reasonable
 20 consumer would need to make an imaginative leap to see the TITAN mark and understand that the
 21 marked products relate to indoor gardening equipment.

22 In opposition, TLS contends that TITAN CONTROLS is a descriptive mark and the court
 23 agrees. Despite defendants’ claim that TITAN specifically refers to the Greek god Helios, the court
 24 finds that a reasonable consumer is more likely to associate the term TITAN with its more general
 25 definitions. The term TITAN is defined as “any of a family of giants in Greek Mythology,” - not
 26 just Helios himself - or “one that stands out for greatness or achievement.” *Merriam-Webster’s*

1 *Collegiate Dictionary* (Springfield, Mass.: Merriam-Webster, Inc., 2008) (11th ed.) at 1311. The
 2 court finds it likely that a reasonable consumer would recognize the term TITAN, in the context of
 3 defendants' products, as being used in the "standing out for greatness or achievement" sense.

4 Further, "under the anti-dissection rule, the validity and distinctiveness of a composite
 5 trademark is determined by viewing the trademark as a whole, as it appears in the marketplace.
 6 This is because whether a mark suggests or describes the goods or services of the trademark holder
 7 depends, of course, upon what those goods or services are." *JL Beverage Company*, 2012 U.S. Dist
 8 LEXIS 137076, *15-16. Although defendants focus solely on the term TITAN in their mark
 9 analysis, the additional defining term CONTROLS must be used in conjunction with TITAN to
 10 determine the significance and strength of the trademark. Reviewing the trademark in its entirety,
 11 the court finds that the mark TITAN CONTROLS is likely to be understood by a reasonable
 12 consumer to mean "really great controls" which is a descriptive, rather than suggestive mark.

13 Because the court has found that TITAN CONTROLS is a descriptive mark, defendants are
 14 only entitled to trademark protection if the mark has acquired secondary meaning. To determine
 15 whether a descriptive mark has acquired secondary meaning, courts consider: "(1) whether actual
 16 purchasers of the product bearing the claimed trademark associate the trademark with the producer,
 17 (2) the degree and manner of advertising under the claimed trademark, (3) the length and manner of
 18 use of the claimed trademark, and (4) whether use of the claimed trademark has been exclusive."
 19 *Dept. of Parks and Recreation*, 448 F.3d at 1128 (internal quotations omitted).

20 Here, the limited record before the court establishes that TITAN CONTROLS has acquired
 21 secondary meaning in the indoor gardening marketplace. First, the commercial success of the
 22 TITAN CONTROLS marked products, in excess of \$10 million in sales, establishes that consumers
 23 associate TITAN CONTROLS with quality products in the indoor gardening industry. Second,
 24 defendants engage in extensive advertising on the TITAN CONTROLS marked product line. In
 25 fact, defendants established a separate TITAN CONTROLS website for product advertising,
 26 distinct from defendant Sunlight's general company website. Third, the TITAN CONTROLS mark

1 has been used since 2008. Finally, defendants' use of the trademark within the indoor gardening
 2 market has been exclusive. Therefore, even though TITAN CONTROLS is a descriptive mark, the
 3 court finds that it has achieved sufficient secondary meaning to warrant trademark protection.
 4 Accordingly, this factor favors defendants and the granting of an injunction.

5 **ii. Proximity or Relatedness of the Goods**

6 The second *Sleekcraft* factor is the proximity or relatedness between the two goods in the
 7 market. *Sleekcraft*, 599 F.2d at 348. "If goods are closely related, consumers are more likely to be
 8 confused by the use of similar marks and will mistakenly assumed there is an association between
 9 the producers of the goods when no such association exists." *R&R Partners*, 447 F. Supp. 2d. at
 10 1152. "The more likely the public is to make such an association, the less similarity in the marks is
 11 requisite to a finding of likelihood of confusion." *Id.* "Thus, less similarity between the marks will
 12 suffice when the goods are complementary, the products are sold to the same class of purchasers, or
 13 the goods are similar in use and function." *Id.* (quoting *Sleekcraft*, 599 F.2d at 348, n.10).

14 Here, the trademarked goods are complementary goods, sold within the same industry and
 15 to the same class of consumers. Additionally, defendants' TITAN CONTROLS marked products
 16 are designed to be plug-and-play style controllers. This means that they are designed in such a way
 17 that other products, including TITANESS marked grow lights can be used with the controller
 18 without additional components or products. Based on this design feature, the court finds that the
 19 public is likely to mistakenly assume there is an association between these goods, though no such
 20 association exists. Therefore, the court finds that this factor weighs in favor of defendants.

21 **iii. Similarity of the Marks**

22 The third *Sleekcraft* factor is the similarity of the two marks. *Sleekcraft*, 599 F.2d at 348.
 23 The likelihood of confusion becomes more likely as the similarity between two marks becomes
 24 greater. See *R&R Partners*, 447 F. Supp. 2d. at 1152. There are three factors courts may consider
 25 in determining the similarity of the marks: "(1) marks should be considered in their entirety and as
 26 they appear in the marketplace; (2) similarity is best adjudged by appearance, sound, and meaning;

1 and, (3) similarities weigh more heavily than differences.” *Id.* Further, “[a] court does not consider
 2 the similarity of the marks in the abstract, but rather in light of the way the marks are encountered
 3 in the marketplace and the circumstances surrounding the purchase.” *Reno Air Racing Assoc.*, 452
 4 F.3d at 1137.

5 Initially, the court notes that the term TITANESS is simply the feminized version of
 6 TITAN, and as such, is a similarly sounding mark. *See e.g., Sleekcraft*, 599 F.2d at 351-352
 7 (“Sound is also important because reputation is often conveyed word-of-mouth. We recognize that
 8 the two sounds can be distinguished, but difference is only a small part of one syllable. . . Slight
 9 differences in the sound of trademarks will not protect the infringer.”). Although TITAN
 10 CONTROLS is a two-word mark, the sound similarity between TITAN and TITANESS, when
 11 viewed in the limited marketplace of the indoor gardening industry, is significant to the court.
 12 Therefore, the court finds that these competing marks are sufficiently similar such that a reasonable
 13 consumer is likely to be confused by the competing marks. Accordingly, this factor falls in favor of
 14 defendants.

15 **iv. Evidence of Actual Confusion**

16 The fourth *Sleekcraft* factor is evidence of actual consumer confusion in the marketplace.
 17 *Sleekcraft*, 599 F.2d at 348. “Evidence that use of two marks has already led to confusion is
 18 persuasive proof that future confusion is likely.” *R&R Partners*, 447 F. Supp. 2d. at 1153.

19 In their motion, defendants concede that they do not have any evidence of actual confusion
 20 at this time. However, “[b]ecause of the difficulty in garnering such evidence, the failure to prove
 21 instances of actual confusion is not dispositive.” *Sleekcraft*, 599 F.2d at 353. Therefore, because
 22 TLS is new to the market and evidence of confusion is not readily available, the court finds that this
 23 factor is neutral.

24 **v. Marketing Channels Used**

25 The fifth *Sleekcraft* factor is the similarity of the marketing channels used by the parties.
 26 *Sleekcraft*, 599 F.2d at 348. “Convergent marketing channels increase the likelihood of confusion.

1 This factor receives greater weight when the products are sold in niche marketplaces and less
 2 weight when the products share a ubiquitous marketing channel such as the online marketplace.”
 3 *Signeo USA, LLC*, 2012 U.S. Dist. LEXIS, 79356, at *33.

4 Here, the marketing channels used by the parties, namely trade shows and the two main
 5 industry publications - *Maximum Yield Industry News* and *Maximum Yield USA* - are identical and,
 6 therefore, this factor weighs in favor of defendants.

7 **vi. Degree of Care used in the Purchase of Goods**

8 The sixth *Sleekcraft* factor is the degree of care user by purchasers in purchasing the goods.
 9 *Sleekcraft*, 599 F.2d at 348. The standard used is that of the typical buyer exercising ordinary
 10 caution. *R&R Partners*, 447 F. Supp. 2d. at 1156. “Although the wholly indifferent may be
 11 excluded, the standard includes the ignorant and the credulous.” *Sleekcraft*, 599 F.2d at 353.
 12 However, “[w]hen the buyer has expertise in the field, a higher standard is proper though it will not
 13 preclude a finding that confusion is likely. Similarly, when the goods are expensive, the buyer can
 14 be expected to exercise greater care in his purchases; again, though, confusion may still be likely.”
 15 *Id.* Thus, “[a]s a rule of thumb, consumers are expected to be more discerning and less easily
 16 confused when the products in question are expensive items.” *General Motors Co.*, 223 F. Supp. 2d
 17 at 1194.

18 Here, it is undisputed that both companies market to the indoor gardening community.
 19 Although their respective products are not exactly the same, they are complementary goods. Thus,
 20 even a sophisticated consumer would likely be confused into believing that the TITANESS lighting
 21 products are to be used with TITAN CONTROLS controllers and are likely to purchase both
 22 products together. Therefore, the court finds that this factor weighs in favor of defendants.

23 **vii. Intent in Selecting the Mark**

24 The seventh *Sleekcraft* factor is the allegedly infringing party’s intent in selecting the
 25 allegedly infringing mark. *Sleekcraft*, 599 F.2d at 348. When an alleged infringer knowingly adopts
 26 a mark similar to another’s, a court may presume that the defendant chose that mark for the purpose

1 of deceiving the public. *See R&R Partners*, 447 F. Supp. 2d. at 1156.

2 Here, there is no evidence of TLS's intent in choosing the TITANESS mark. Based on the
 3 lack of evidence of intent in this action, the court finds that this factor weighs in favor of TLS.

4 **viii. Likelihood of Expansion into Other Markets**

5 The final *Sleekcraft* factor is the parties' likelihood of expanding into other markets using
 6 the same mark. *Sleekcraft*, 599 F.2d at 348. "Inasmuch as a trademark owner is afforded greater
 7 protection against competing goods, a strong possibility that either party may expand his business
 8 to compete with the other will weigh in favor of finding that the present use is infringing." *R&R*
 9 *Partners*, 447 F. Supp. 2d. at 1155.

10 The court finds that this factor is relatively unimportant as the parties are already admittedly
 11 marketing their products in the same market.

12 **ix. Conclusion**

13 In conclusion, the majority of *Sleekcraft* factors in this action weigh in favor of defendants.
 14 Thus, the court finds that there is a likelihood of consumer confusion between defendants' TITAN
 15 CONTROLS mark and TLS's TITANESS mark. Therefore, defendants have satisfied both
 16 elements of a trademark infringement claim under the Lanham Act. Because the court has found
 17 that defendants are likely to succeed on their claims under the Lanham Act, the court must analyze
 18 the remaining *Winters* factors. *See Winters*, 129 S. Ct. at 376.

19 **IV. Irreparable Harm**

20 A plaintiff must show that an irreparable injury is *likely*, not merely *possible*, before a
 21 preliminary injunction may be issued. *American Trucking Ass'n v. City of Los Angeles*, F.3d
 22 1046, 1052 (9th Cir. 2009) (reversed on other grounds *Am. Trucking Ass'n v City of Los Angeles*,
 23 596 F.3d 602 (9th Cir. 2010)) (emphasis added). "Issuing an [injunction] based only on a
 24 possibility of irreparable harm is . . . an extraordinary remedy that may only be awarded upon a
 25 clear showing that the plaintiff is entitled to such relief." *Winter*, 129 S. Ct. at 375-76. Further,
 26 "[h]arm is irreparable for the purposes of a preliminary injunction if it cannot be redressed by a

1 legal remedy or an equitable remedy following trial.” *Russell Road Food and Beverage*, 2013 U.S.
 2 Dist LEXIS 11034, *11.

3 Initially, defendants argue that once the moving party demonstrates a likelihood of success,
 4 irreparable harm may be presumed in a trademark infringement action. *See General Motors Co.*,
 5 223 F. Supp. 2d at 1196-1197 (“If a plaintiff has demonstrated a likelihood of prevailing on the
 6 merits of their trademark infringement or unfair competition claims, irreparable harm may be
 7 presumed.”). However, “[i]t is unlikely that trademark infringement gives rise to a presumption of
 8 irreparable harm in light of the Supreme Court’s opinion in *eBay, inc. v. MercExchange, LLC*, 547
 9 U.S. 388 (2006). There, the Court held that proof of patent infringement does not raise a
 10 presumption of irreparable harm, 547 U.S. at 394, and the Ninth Circuit has extended this
 11 reasoning to copyright infringement, *Flexible Lifeline Systems, Inc. v. Precision Lift, Inc.*, 654 F.3d
 12 989, 1000 (9th Cir. 2011). A similar logic applies to trademark claims.” *Russell Road Food and*
 13 *Beverage*, 2013 U.S. Dist LEXIS 11034, *11. Therefore, defendants have to actually show
 14 irreparable harm.

15 Here, defendants contend that their goodwill is harmed by TLS’s use of a similar mark in a
 16 very limited marketplace. The court agrees. An irreparable injury exists when continuing mark
 17 infringement will result in a loss in the trademark owner’s reputation and goodwill. *See Apple*
 18 *Computer, Inc. v. Formula Int’l Inc.*, 725 F.2d 521, 526 (9th Cir. 1984).

19 V. Balance of Equities

20 In seeking a preliminary injunction, the moving party must suffer a degree of hardship that
 21 outweighs the hardship placed upon the allegedly infringing party by the injunction. *See Topanga*
 22 *Press, Inc. v. City of Los Angeles*, 989 F.2d 1524, 1528 (9th Cir. 1993). “An injunction may not
 23 issue unless the balance of hardships tips in favor of the moving party. A court must remain free to
 24 deny a preliminary injunction, whatever be the showing of likelihood of success, when equity in
 25 light of all the factors so requires.” *JL Beverage Company*, 2012 U.S. Dist LEXIS 137076, *47. In
 26 a trademark infringement action, factors to be considered include the effect on the trademark

1 owner's market share, business reputation, and goodwill, as well as the parties' relative size. *See*
 2 *Progressive Games, Inc. v. Shuffle Master, Inc.*, 69 F.Supp.2d 1276, 1287 (D. Nev. 1999) (citations
 3 omitted).

4 Here, the court finds that the balance of equities favors defendants as the trademark owners
 5 because TLS is allegedly infringing a federally registered trademark. *See Krause Interm, Inc. v.*
 6 *Reed Elsevier, Inc.*, 866 F. Supp. 585, 586 (D. D.C. 1994). Further, the court finds that TLS will
 7 suffer minimal harm by issuance of an injunction because an injunction will not preclude TLS from
 8 selling its lighting products. Rather, the issuance of an injunction will only prevent TLS from
 9 labeling their products with their TITANESS service mark.

10 VI. Public's Interest

11 Before granting an injunction the court must determine that an injunction is in the public's
 12 interest. *Winter*, 129 S. Ct. at 375-76.“In the trademark context, courts often define the public
 13 interest at stake as the right of the public not to be deceived or confused.” *JL Beverage Company*,
 14 2012 U.S. Dist LEXIS 137076, *48-49.

15 Here, the court finds that an injunction protects the public interest in avoiding consumer
 16 confusion from competing uses of a federally registered trademark. *See e.g., Autoskill Inc. v. Nat'l*
 17 *Educ. Support Systems*, 994 F.2d 1476, 1499 (10th Cir. 1993).

18 VII. Bond

19 Federal Rule of Civil Procedure 65 requires that defendants post security as the court deems
 20 proper to protect TLS if it is later determined that an injunction should not have been issued. FED.
 21 R. CIV. P. 65(c). While the language of the rule is mandatory, the court has wide discretion whether
 22 to set a bond, and how much. *See Corrigan Dispatch Co. v. Casa Guzman*, 569 F.2d 300, 303 (5th
 23 Cir. 1978); *Carillon Importers, LTD. v. Frank Pesce Int'l Group Limited*, 112 F.3d 1125 (11th
 24 Cir. 1997).

25 Here, the court finds that a bond in the amount of five thousand dollars (\$5,000.00) is
 26 appropriate in this action in light of the court's finding on defendants' likelihood of success on their

1 claims under the Lanham Act.

2 IT IS THEREFORE ORDERED that defendants' motion for a preliminary injunction
3 (Doc. #23) is GRANTED. Plaintiff Titaness Light Shop, LLC is ENJOINED from using any mark
4 that indicates an association with defendants Sunlight Supply, Inc. and IP Holdings, Inc., including,
5 without limitation, the terms "TITAN CONTROLS" and "TITANESS" or any colorable imitation
6 thereof.

7 IT IS FURTHER ORDERED that defendants shall post a bond with the clerk of court in the
8 amount of five thousand dollars (\$5,000.00).

9 IT IS SO ORDERED.

10 DATED this 29th day of August, 2013.



12 LARRY R. HICKS
13 UNITED STATES DISTRICT JUDGE
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